



**Indochine Counsel**  
Business Law Practitioners

Think Business, Practising Law

# Some Legal Aspects in M&A Transactions

Some legal aspects in M&A transactions





## Key points

1. **The lawyer's view on the nature of M&A**
2. **Legal regulations relating to M&A**
3. **Some sharings, for more effective use of the laws and for more efficient cooperation with lawyers**



## **1. A lawyer's view on M&A**

- **Some of investors' ways to enter, adjust, or exit from business**
- **On the legal perspective, the change in ownership and management rights in an enterprise**
- **M&A as defined in Vietnam laws:**
  - **According to the Law on Competition 2004 (Art. 17)**
  - **According to the Law on Enterprises 2005 (Art. 152, Art. 153)**
  - **According to the Law on Investment 2005 (Art. 21, Art. 25)**



## **1. A lawyer's view on M&A (cont.)**

**The value of our approach on M&A: an implied reminder on the legal conditions for the investor to enter, adjust, or exit from business**



## **2. Legal regulations relating to M&A**

**To answer the following 3 questions:**

- 1) Is the proposed transaction permitted/ pre-empted?**
- 2) What are the procedures and documents required to implement the transaction?**
- 3) Are there any “legal issues” in the target company?**



## **2. Legal regulations relating to M&A (cont.)**

✓ **1<sup>st</sup> question: Is the proposed transaction permitted/ pre-empted?**

→ **Check the Law on Competition, Law on Enterprises, provisions on market openings, any agreements pre-empting the proposed transaction**

**E.g.: Service to collect refuse directly from households**



## **2. Legal regulations relating to M&A (cont.)**

**✓ 2<sup>nd</sup> question: What are the procedures and documents required to implement the transaction?**

**→ Check the Law on Enterprises, Law on Investment, Law on Securities, specialized laws.**



## **2. Legal regulations relating to M&A (cont.)**

- ✓ **3<sup>rd</sup> question: Are there any “legal issues” in the target company?**

→ **Check ...ALL the relevant laws!**



### **3. Some sharings, for more effective use of the laws and for more efficient cooperation with lawyers**

- ✓ **Process of an M&A transaction**
- ✓ **Some lawyer's sharings during each phase of the process**



### **3. Some sharings, for more effective use of the laws and for more efficient cooperation with lawyers (cont.)**

#### **✓ Process of an M&A transaction**

- Preliminary negotiation
- Legal Due Diligence on the target company
- Contract building
- Completion
- Post-completion



### **3. Some sharings ...during the preliminary negotiation phase**

- **Results: Confidentiality Agreement, Memorandum of Understanding/ Termsheet**
- **Requirement: Identify the purpose of the proposed M&A transaction**
- **Some note:**
  - ✓ **State the purpose clearly to your lawyers (if you are not sure where you are going, you may end up somewhere else – Lawrence J. Peter)**
  - ✓ **Non-binding clauses: Are they really not binding?**



### **3. Some sharings ...during the Legal DD phase**

**Basically, answer the following 2 questions:**

- ✓ **What is legal DD?**
- ✓ **What are the purpose/ requirements of the legal DD?**



- What is legal DD?



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- What are the requirements of a legal DD?



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- What are the purpose/ requirements/ scope of legal DD? Why do lawyers have to check...ALL relevant laws?

**Case:**

Volkswagen acquired Rolls Royce Motor Company, but failed to identify/ clear the licensed logo, and eventually compromised to the licensor BMW, Volkswagen's competitor in the acquisition



### **3. Some sharings ...during the contract building phase**

- Timing: After legal DD, key commercial terms agreed
- This phase involves more drafting technicality (lawyers' work)
- Some dos and don'ts:
  - Don't put the agreement before negotiations (and agreed key terms).
  - Do have the "legal issues" raised in the legal DD settled by the contract/ transactional documents
  - Do comply with the laws



### **3. Some sharings ...during the completion phase: conduct the procedures**

- ✓ To transfer/ record the transfer of ownership
- ✓ To effect payment
- ✓ To handle documents, evidence about completion
- ! : The Buyer's worries in 43/2010/ND-CP



### **3. Some sharings ...during the completion phase: conduct the procedures**

- ✓ To update the target company's shareholder register, to issue shares, etc.
- ✓ To appoint member to the Board of Management
- ✓ To implement the changes with respect to the target company's management system, corporate culture, etc.



- Some implications from Sun Tsu in Bing-fa: “If you know yourself and know the enemy, you need not fear the results of hundred battles”.

From the legal perspective,

1. Knowing yourself: Is your company allowed or pre-empted from the proposed M&A transaction?
2. Knowing the “enemy”: Any legal issues about the target company (compliance, any liability, any disputes, restrictions,...)? Are you clear about the stipulated steps and required documents to implement the transaction?



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## Q & A

Thank you, and success to your  
transactions!



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